

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IAN ANDREW CARR,

Petitioner,

v.

CIVIL NO. 3:22CV207
CRIMINAL NO. 3:22CR43
(KLEEH)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION AND
DISMISSING 28 U.S.C. § 2255 PETITION WITH PREJUDICE

On November 12, 2019, the pro se Petitioner, Ian Carr ("Petitioner"), filed a petition to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [3:22CR43, ECF No. 98; 3:22CV207, ECF No. 1]. He contends that his counsel was constitutionally ineffective at the plea and sentencing stages of his criminal proceeding. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Robert W. Trumble (the "Magistrate Judge") for review.

On July 23, 2023, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court deny and dismiss the petition with prejudice [3:22CR43, ECF No. 126; 3:22CV207, ECF No. 8]. Specifically, the Magistrate Judge found that Petitioner failed to establish that his counsel's performance was deficient or that he was prejudiced by his counsel's

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performance at any stage of his prosecution. The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals."

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Petitioner accepted service of the R&R on July 31, 2023 [ECF No. 127]. He filed no objections. Accordingly, the Court has carefully reviewed the R&R for clear error. Finding none, the Court **ADOPTS** the R&R in its entirety [3:22CR43, ECF No. 126;

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3:22CV207, ECF No. 8] and **DENIES** and **DISMISSES WITH PREJUDICE** the Petition [3:22CR43, ECF No. 98; 3:22CV207, ECF No. 1].

Pursuant to Rule 11(a) of the Rules Governing § 2255 Proceedings, the district court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." If the Court denies the certificate, "a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Id. The Court finds it inappropriate to issue a certificate of appealability in this matter because Petitioner has not made a "substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2). The Court, therefore, **DENIES** issuing a certificate of appealability.

It is so **ORDERED**.

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The Clerk shall enter a separate judgment order in favor of the Government; strike Civil Action Number 3:22CV207 from the Court's active docket; and transmit copies of this Order to counsel of record via email and the pro se Defendant via certified mail, return receipt requested, at the last known address as shown on the docket.

DATED: October 12, 2023

Handwritten signature of Thomas S. Klee in black ink.

THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA